

AGREEMENT TO PURCHASE AND SELL REAL ESTATE
BETWEEN INDIAN RIVER COUNTY AND LOCKWOOD LANE
ACQUISITION GROUP, LLC

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE (“Agreement”) is made and entered into as of the ____ day of August, 2017, by and between Indian River County, a political subdivision of the State of Florida, 1801 27th Street, Vero Beach, FL 32960 (“the County”), and Lockwood Lane Acquisition Group, LLC, f/k/a Lockwood Lane Development Group, LLC, whose address is Post Office Box 690997, Vero Beach, FL 32968 (“Lockwood”), who agree as follows:

WHEREAS, Lockwood owns property located at the northwest corner of 17th Street SW and 27th Avenue, Indian River County, Vero Beach, Florida, an aerial photo of the property is attached to this agreement as Exhibit “A” and incorporated by reference herein; and

WHEREAS, the County entered into a Developer Agreement with the owners of the Millstone Landing subdivision to plan, design and construct 17th Street SW from 27th Avenue to the western boundary of the Millstone Landing development and the Developer Agreement calls for a southbound right turn lane on 27th Avenue onto 17th Street SW; and

WHEREAS, in order for the County to proceed with its road expansion plans, the County needs to acquire property to be used as right-of-way along 27th Avenue from Lockwood; and

WHEREAS, the County has contacted Lockwood about acquiring a 0.61 acre parcel of property from Lockwood to be used as right-of-way as depicted on Exhibit “B” (collectively, the Property); and

WHEREAS, Lockwood plans to develop its property into a residential subdivision and acknowledges that the turn lane on 27th Avenue would benefit the future residents of the subdivision; and

WHEREAS, the County is prepared to take the Property by using its power of eminent domain; and

WHEREAS, Lockwood and the County wish to avoid the risk, time and expense of litigation by entering into this agreement for sale and purchase of the Property;

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and premises hereinafter, the COUNTY and LOCKWOOD agree as follows:

1. Recitals. The above recitals are affirmed as being true and correct and are

incorporated herein

2. Agreement to Purchase and Sell. Lockwood hereby agrees to sell to the County, and the County hereby agrees to purchase from Lockwood, upon the terms and conditions set forth in this Agreement, that certain parcel of real property located at the north west corner of 17th Street SW and 27th Avenue, Vero Beach, Florida and more specifically described in the sketch and legal description attached as Exhibit "B", containing approximately 0.61 acres, and all improvements thereon, together with all easements, rights and uses now or hereafter belonging thereto.

2.1 Consideration, Effective Date. The Consideration for the Property shall be the construction of a south bound right turn lane on 27th Avenue to 17th Street SW, Vero Beach, FL (Improvements). The County shall have the Improvements constructed pursuant to a Developer Agreement with the developer of the adjacent Millstone Landing subdivision. The Improvements shall be designed, permitted and constructed without cost or expense to Lockwood. The Parties agree that construction of the Improvements shall take place within one year after the closing of this transaction. The Effective Date of this Agreement shall be the date upon which the County shall have approved the execution of this Agreement by the Indian River County Board of County Commissioners at a formal meeting of such Board. This Paragraph 2.1 and the County's obligations herein shall survive closing, and in the event of non-compliance by the County, Lockwood, shall be entitled to injunctive relief to enforce compliance.

3. Title. Lockwood shall convey marketable title to the Property by Warranty Deed free of claims, liens, easements and encumbrances of record or known to Lockwood; but subject to property taxes for the year of Closing and covenants, restrictions and public utility easements of record provided (a) there exists at Closing no violation of any of the foregoing; and (b) none of the foregoing prevents County's intended use and development of the Property ("Permitted Exceptions").

4. Representations of Lockwood.

4.1 Lockwood is indefeasibly seized of marketable, fee simple title to the Property, and is the sole owner of and has good right, title, and authority to convey and transfer the Property which is the subject matter of this Agreement, free and clear of all liens and encumbrances. Lockwood shall not be required to incur any cost or expenses to clear title, remove clouds on title or to delete any exceptions from title insurance coverage.

4.2 From and after the Effective Date of this Agreement, Lockwood shall take no action which would impair or otherwise affect title to any portion of the Property, and shall record no documents in the Public Records which would affect title to the Property, without the prior written consent of the County.

4.3 There are no existing or pending special assessments affecting the Property, which are or may be assessed by any governmental authority, water or sewer authority, school district, drainage district or any other special taxing district.

5. Default.

5.1 In the event the County shall fail to perform any of its obligations hereunder, Lockwood shall have the right to seek specific performance. In such event, the prevailing party shall be entitled to attorney's fees and costs, including on appeal. This paragraph shall survive closing.

5.2 In the event Lockwood shall fail to perform any of its obligations hereunder, the County shall, at its sole option, be entitled to: (i) terminate this Agreement by written notice delivered to Lockwood at or prior to the Closing Date and thereupon neither the County nor any other person or party shall have any claim for specific performance, damages or otherwise against Lockwood; or (ii) obtain specific performance of the terms and conditions hereof; or (iii) waive Lockwood's default and proceed to Closing.

6. Closing.

6.1 The closing of the transaction contemplated herein ("Closing" and "Closing Date") shall take place within 30 days following the execution of the contract by the Chairman of the Board of County Commissioners. With the written consent of Lockwood, the County or its agent shall be responsible for obtaining any partial releases or satisfactions of encumbrances on the Property. The closing date shall automatically be extended by a period of 30 days if the delay in closing is attributable to obtaining partial satisfaction and release of mortgage(s) encumbering the Property so long as the County is acting in good faith with the holder of the encumbrance to partially release or satisfy the encumbrance. The parties agree that the Closing shall be as follows:

(a) Lockwood shall execute and deliver to the County a Warranty deed conveying marketable title to the Property, free and clear of all liens and encumbrances and in the condition required by paragraph 3.

(b) Lockwood shall have removed all of its personal property and equipment from the Property and Lockwood shall deliver possession of the Property to County vacant and in the same or better condition that existed at the Effective Date hereof.

(c) If Lockwood is a non-resident alien or foreign entity, it shall deliver to the County an affidavit, in a form acceptable to the County, certifying that Lockwood and any interest holders are not subject to tax under the Foreign Investment and Real Property Tax Act of 1980.

(d) Lockwood and the County shall each deliver to the other such other documents or instruments as may reasonably be required to close this transaction.

6.2 Taxes. All taxes and special assessments which are a lien upon the property on or prior to the Closing Date (except current taxes which are not yet due and payable) shall be paid by Lockwood.

7. Closing Costs; Expenses. County or its agent shall be responsible for preparation of all Closing documents.

7.1 County shall pay the following expenses at Closing:

7.1.1 The cost of recording the Warranty deed and any release, partial release or satisfaction obtained by Lockwood pursuant to this Agreement.

7.1.2 Documentary Stamps required to be affixed to the Warranty Deed, if any.

7.1.3 All costs and premiums for the owner's marketability title insurance commitment and policy, if any.

8. Miscellaneous.

8.1 Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Indian River County for all state court matters, and in the Southern District of Florida for all federal court matters.

8.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to this transaction and supersedes all prior agreements, written or oral, between Lockwood and the County relating to the subject matter hereof. Any modification or amendment to this Agreement shall be effective only if in writing and executed by each of the parties.

8.3 Assignment and Binding Effect. Neither County nor Lockwood may assign its rights and obligations under this Agreement without the prior written consent of the other party. The terms hereof shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

8.4 Notices. Any notice shall be deemed duly served if personally served or if mailed by certified mail, return receipt requested, or if sent via "overnight" courier service or facsimile transmission, as follows:

If to Lockwood:

Lockwood Lane Acquisition Group, LLC
Attention Walter T. Jerkins, Jr.
Post Office Box 690997
Vero Beach, FL 32968

If to County:

Indian River County
1801 27th Street
Vero Beach, FL. 32960
Attn: Public Works Director

Either party may change the information above by giving written notice of such change as provided in this paragraph.

8.5 Survival and Benefit. Except as otherwise expressly provided herein, each agreement, representation or warranty made in this Agreement by or on behalf of either

party, or in any instruments delivered pursuant hereto or in connection herewith, shall survive the Closing Date and the consummation of the transaction provided for herein. The covenants, agreements and undertakings of each of the parties hereto are made solely for the benefit of, and may be relied on only by the other party hereto, its successors and assigns, and are not made for the benefit of, nor may they be relied upon, by any other person whatsoever.

8.6 Attorney's Fees and Costs. In any claim or controversy arising out of or relating to this Agreement, each party shall bear its own attorney's fees, costs, and expenses.

8.7. Counterparts. This Agreement may be executed in two or more counterparts, each one of which shall constitute an original.

8.8. County Approval Required: This Agreement is subject to approval by the Indian River County as set forth in paragraph 2.1

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

INDIAN RIVER COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

LOCKWOOD LANE ACQUISITION
GROUP, LLC

Joseph E. Flescher, Chairman

By: Walter T. Jerkins, Jr., President
Date: _____

Date Approved by BCC _____

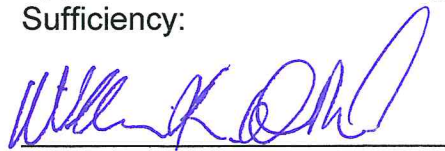
ATTEST:
Jeffrey R. Smith, Comptroller and
Clerk of Circuit Court

Deputy Clerk

Approved:

Approved as to Form and Legal
Sufficiency:

Jason E. Brown
County Administrator



William K. DeBaal
Deputy County Attorney

EXHIBIT "A"

[Print](#) | [Back](#)

Indian River County GIS



ParcelID	OwnerName	PropertyAddress
33392700001016000002.0	LOCKWOOD LAND DEVELOPMENT GROUP LLC	17TH ST SW VERO BEACH, FL 32968

Notes

EXHIBIT "B"

Sketch and Description for: INDIAN RIVER COUNTY

Legal Description (Right-of-Way Acquisition)

Being a Parcel of land lying in Tract 16, according to the Last General Plat of The Indian River Farms Company Subdivision, as recorded in Plat Book 2, Page 25, of the Public Records of St. Lucie County, Florida. Said Parcel also lying and being in Section 27, Township 33 South, Range 39 East, Indian River County, Florida, said parcel being more particularly described as follows:

Commencing at the Southeast corner of said Section 27; Thence North 00°04'35" East, along the East line of said Section 27, a distance of 30.00 to a point on the Easterly prolongation of the North Right-of-Way Line of 17th Street Southwest; Thence along said Easterly prolongation, North 89°29'35" West, a distance of 30.00 feet to a point on the Westerly right-of-Way line of 27th Avenue, as shown on the Florida Department of Transportation Maintenance Map for State Road 607 (27th Avenue) Section 88004-Maint. dated 4-10-95, per Plat Book 14, Page 47, of the Public Records of Indian River County, Florida. said point being the **Point of Beginning** of the following described parcel:

Thence continue North 89°29'35" West, along the North Right-of-Way line of said 17th Street Southwest, a distance of 75.00 feet; Thence departing said North Right-of-Way line, North 00°04'35" East, along the East line of the additional Right-of -Way for 17th Street Southwest, per Official Record Book 2104, Page 2138, said line lying 75.00 feet West of and parallel with as measured at right angles to the West Right-of-Way line of said 27th Avenue, a distance of 70.00 feet; Thence departing said East line, North 45°18'55" East, a distance of 56.33 feet; Thence North 00°04'35" East, along a line that is 35.00 feet West of and parallel with, as measured at right angles to, the West Right-of-Way line of said 27th Avenue, a distance of 550.04 feet; Thence South 89°55'25" East, a distance of 35.00 feet to the aforesaid West Right-of-Way line of said 27th Avenue; Thence South 00°04'35" West, along said West Right-of-Way line, a distance of 660.27 feet to the **Point of Beginning**.

Containing 26,704 square feet, (0.61 Acres) more or less

Surveyor's Notes

1) This sketch and Legal Description was prepared with the benefit of a Sketch and Legal Description prepared by Houston, Schulke, Bittle and Stoddard recorded in Official Record Book 2104, Page 2138, Public Records of Indian River County, Florida. Together with the Plats of Millstone Landing PD, Phase 1, recorded in Plat Book 22, Page 79, Millstone Landing PD, Phase 3, recorded in Plat Book 23, Page 42 and the Plat of Falcon Trace - Plat Four, recorded in Plat Book 20, Page 87. Public records of Indian River County, Florida.

2) This legal description shall not be valid unless:

(A) Provided in its entirety consisting of 2 sheets , with sheet 2 showing the sketch of the legal description.

(B) Reproductions of the description and sketch are not valid unless signed and sealed with an embossed surveyor's seal.

3) The Bearings shown hereon are based upon the East line of Section 27, said line also being the East line of Tract 16, as having an assumed Bearing of North 00°04'35" East, as shown on Sheet 9 of 30 of the Construction Plans for Millstone landing, Prepared by Masteller & Moler, Incorporated, on the date of 6-1-2016.

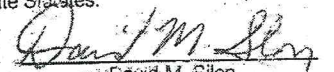
Certification

(Not valid without the signature and original raised seal of a Florida licensed Surveyor and Mapper)

I hereby certify that the Sketch and Legal Description of the property shown and described hereon was completed under my direction and said Sketch and Legal is true and correct to the best of my knowledge and belief.

I further certify that this Sketch and Description meets the Standards of Practice for surveys set forth by the Florida Professional Board of Surveyors and Mappers in chapter 5J-17.052 Florida Administrative code, pursuant to section 472.027 Florida State Statutes.

6-6-2017
Date of Signature


David M. Silon
Professional Surveyor and Mapper
Florida Certificate No. 6139

This is not a Boundary Survey

AGENCY: **INDIAN RIVER COUNTY, FL
PUBLIC WORKS DEPT./ENGINEERING DIV.**

DATE: **4/04/17** DRAWN BY: **R. INGLETT**

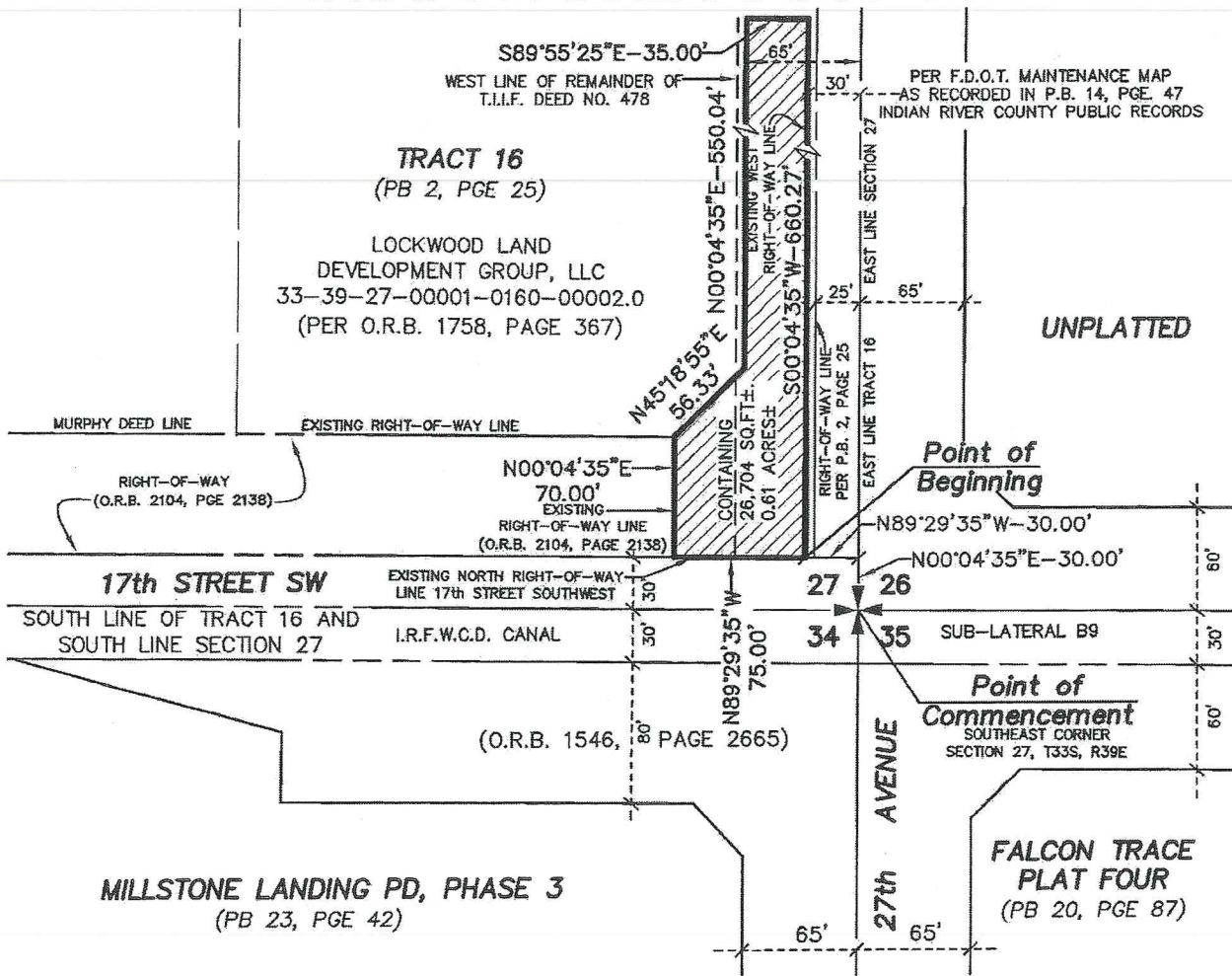
SCALE: **N/A** APPROVED BY: **D.SILON**

SHEET: **1 OF 2** JOB NO: **1616**

**Sketch and Legal Description
for:
INDIAN RIVER COUNTY**

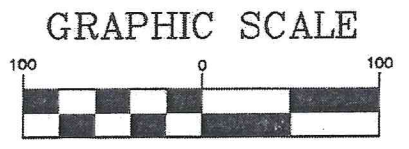
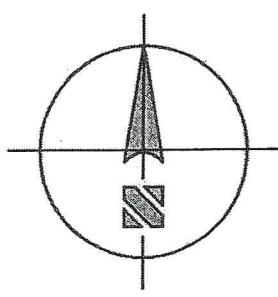
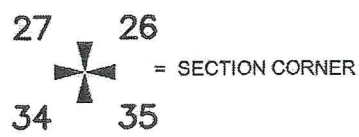
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Sketch and Legal Description for: INDIAN RIVER COUNTY



Legend and Abbreviations

- DB = DEED BOOK
- F.D.O.T. = FLORIDA DEPARTMENT OF TRANSPORTATION
- I.R.F.W.C.D. = INDIAN RIVER FARMS WATER CONTROL DISTRICT
- LLC = LIMITED LIABILITY COMPANY
- O.R.B. = OFFICIAL RECORD BOOK
- PB = PLAT BOOK
- PGE. = PAGE
- T.I.I.F. = TRUSTEES OF THE INTERNAL IMPROVEMENT FUND



(IN FEET)
Intended display scale:
1 inch = 100 ft.

This is not a Boundary Survey

AGENCY: INDIAN RIVER COUNTY, FL PUBLIC WORKS DEPT./ENGINEERING DIV.	
DATE: 4/04/17	DRAWN BY: R. INGLETT
SCALE: 1"=100'	APPROVED BY: D.SILON
SHEET: 2 OF 2	JOB NO: 1616

*Sketch and Legal Description
for:
INDIAN RIVER COUNTY*

C:\Public Works\ENGINEERING DIVISION PROJECTS\1616 17th Street SW and 27th Avenue Right of Way Acquisition- Revised 3--28--17\Survey\dwg